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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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NEW DELHI, THURSDAY, MAY 12, 2005 / VAISAKHA 22, 1927

इस भाग में यिन पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 12th May, 2005:—

BILL NO. 75 OF 2005

A Bill to provide for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and for matters connected therewith or incidental thereto.

WHEREAS a declaration as to expediency of control of certain industries by the Union was made under section 2 of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and for matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Small and Medium Enterprises Development Act, 2005.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Advisory Committee" means the committee constituted by the Central Government under sub-section (2) of section 7;

(b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Explanation.—For the purposes of this clause,—

(i) "the day of acceptance" means,—

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

(c) "Board" means the National Small and Medium Enterprises Board established under section 3;

(d) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

(e) "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services in relation thereto;

65 of 1951.

(f) "goods" means every kind of movable property other than actionable claims and money;

(g) "medium enterprise" means an industrial enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;

(h) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;

61 of 1981.

(i) "notification" means a notification published in the Official Gazette;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

2 of 1934.

(l) "small enterprise" means an industrial enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7;

(m) "supplier" means a small enterprise, which has filed a memorandum with the authority referred to in clause (a) of sub-section (1) of section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956;

1 of 1956.

1 of 1956.

39 of 1989.

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956;

(n) "Small Industries Bank" means the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989;

(o) "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution.

CHAPTER II

NATIONAL SMALL AND MEDIUM ENTERPRISES BOARD

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be known as the National Small and Medium Enterprises Board.

Establishment
of Board.

(2) The head office of the Board shall be at Delhi.

(3) The Board shall consist of the following members, namely:—

(a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the *ex officio* Chairperson of the Board;

(b) the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be *ex officio* Vice-Chairperson of the Board, and where there is no such Minister of State or Deputy Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;

(c) five Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, *ex officio*;

(d) the Administrator of a Union territory to be appointed by the Central Government, *ex officio*;

(e) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the small and medium enterprises, *ex officio*;

(f) five Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, *ex officio*;

(g) the Chairman of the Board of Directors of the National Bank, *ex officio*;

(h) the chairman and managing director of the Board of Directors of the Small Industries Bank, *ex officio*;

(i) the chairman, Indian Banks Association, *ex officio*;

(j) One officer of the Reserve Bank, not below the rank of an Executive Director; to be appointed by the Central Government to represent the Reserve Bank;

(k) ten persons to represent the associations of small enterprises and medium enterprises, at least three of whom shall be representatives of associations of women's enterprises, to be appointed by the Central Government;

(l) two persons of eminence, one each from the fields of economics and industry, at least one of whom shall be a woman, to be appointed by the Central Government; and

(m) one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, *ex officio*.

(4) The term of office of the members of the Board, other than *ex officio* members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of their functions by the members of the Board, shall be such as may be prescribed:

Provided that the term of office of an *ex officio* member of the Board shall continue so long as he holds the office by virtue of which he is such a member.

(5) No act or proceedings of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

(6) The Board shall meet at least once in every three months in a year.

(7) The Board may associate with itself, in such manner and for such purposes as it may deem necessary, any person or persons whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated but shall not have the right to vote.

(8) Without prejudice to sub-section (7) the Chairperson of the Board may, for not more than two of the meetings of the Board in a year, invite such Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, the small and medium enterprises, or the Administrators of Union territories and representatives of such other associations of small and medium enterprises, as he may deem necessary for carrying out the purposes of this Act.

Removal of
member from
Board.

4. (1) The Central Government may remove a member of the Board from it, if he—

(a) is, or at any time has been, adjudged as insolvent; or

(b) is, or becomes, of unsound mind and stands so declared by a competent court; or

(c) refuses to act or becomes incapable of acting as a member of the Board; or

(d) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(e) has so abused, in the opinion of the Central Government, his position as a member of the Board as to render his continuance in the Board detrimental to the interests of the general public.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the grounds specified in clauses (c) to (e) of that sub-section unless he has been given a reasonable opportunity of being heard in the matter.

Functions of
Board.

5. The Board shall, subject to the general directions of the Central Government, perform all or any of the following functions, namely:—

(a) examine the factors affecting the promotion and development of small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises;

(b) make recommendations on matters referred to in clause (a) or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the small and medium enterprises; and

(c) advise the Central Government on the use of the Fund or Funds constituted under section 12.

6. Subject to other provisions of this Act, the Member-Secretary of the Board shall exercise such powers and perform such functions as may be prescribed.

Powers and
functions of
Member-
Secretary of
Board.

CHAPTER III

CLASSIFICATION OF ENTERPRISES, ADVISORY COMMITTEE AND MEMORANDUM OF SMALL AND MEDIUM ENTERPRISES

7. (1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951, the Central Government may, for the purposes of this Act, by order, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—

Classification
of enterprises.

65 of 1951.

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, as—

(i) a small enterprise, where the investment in plant and machinery does not exceed five crore rupees; or

(ii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

(b) in the case of the enterprises engaged in providing or rendering of services in relation to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, as—

(i) a small enterprise, where the investment in equipment does not exceed two crore rupees; or

(ii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

65 of 1951.

Explanation.—For the removal of doubt it is hereby declared that the investment in land and building or equipment, as the case may be, shall not be taken into account while determining the investment in plant and machinery or, as the case may be, equipment for the purposes of this sub-section.

(2) The Central Government shall, by notification, constitute an Advisory Committee consisting of the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises, who shall be the Chairperson of the Advisory Committee, not more than five officers of the Central Government possessing necessary expertise in matters relating to small and medium enterprises and not more than two representatives of the State Governments to be appointed by the Central Government.

(3) The Member-Secretary of the Board shall also be the *ex officio* Member-Secretary of the Advisory Committee.

(4) The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee.

(5) The Advisory Committee shall, after considering the following matters, communicate its recommendations to the Central Government, namely:—

- (a) the level of employment in a class or classes of enterprises;
- (b) the level of investments in plant and machinery or equipment, land and building, in a class or classes of enterprises;
- (c) the need of higher investment in plant and machinery or equipment for technological upgradation, employment generation and enhanced competitiveness of the class or classes of enterprises;
- (d) the possibility of promoting and diffusing entrepreneurship in a small or medium enterprises;
- (e) the international standards for classification of small and medium enterprises; and
- (f) such other matters as the Advisory Committee may think fit.

(6) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956, the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

65 of 1951.
61 of 1956.

Memorandum
of small and
medium
enterprises.

8. (1) Any person who intends to establish,—

- (a) a small enterprise, may, at his discretion; or
- (b) a medium enterprise, shall,

file the memorandum of small enterprise or, as the case may be, medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established—

(a) a small enterprise, whether he had or had not obtained a registration certificate, may after the commencement of this Act, at his discretion, file the memorandum;

(b) a medium enterprise, whether he had or had not, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) No. S.O. 477 (E) dated the 25th July, 1991, filed an Industrial Entrepreneur's Memorandum shall, within ninety days from the commencement of this Act, file the memorandum,

in accordance with the provisions of this Act.

(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.

(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified by notification, by the Central Government.

(4) The State Government shall, by notification, specify the authority with which a small enterprise may file the memorandum.

(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

CHAPTER IV

MEASURES FOR PROMOTION, DEVELOPMENT AND ENHANCEMENT OF COMPETITIVENESS OF SMALL AND MEDIUM ENTERPRISES

9. (1) The Central Government may, from time to time, for the purposes of facilitating the promotion and development and enhancing the competitiveness of small enterprises and medium enterprises, particularly of the former, by way of development of skill in the employees, management and entrepreneurs, provisioning for marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit.

Measures for promotion and development.

(2) Notwithstanding anything contained in the provisions of the Employers' Liability Act, 1938, the Weekly Holidays Act, 1942, the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and the Apprentices Act, 1961, a State Government may, by notification, with a view to facilitating the graduation of small enterprises to medium enterprises provide that provisions of those Acts shall not apply to small and medium enterprises employing up to fifty employees in that State.

Credit facilities.

10. The credit facilities to the small and medium enterprises shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank, from time to time, to ensure timely and smooth flow of credit to such enterprises, minimise the incidence of sickness among and enhance the competitiveness of such enterprises.

11. For facilitating promotion and development of small enterprises, the Central Government or the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises.

Procurement preference policy.

12. There shall be constituted, by notification, one or more Funds to be called by such name as may be specified in the notification and there shall be credited thereto any grants made by the Central Government under section 13.

Funds.

13. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit to the Fund or Funds by way of grants for the purposes of this Act, such sums of money as that Government may consider necessary to provide.

Grants by Central Government.

14. (1) The Central Government shall have the power to administer the Fund or Funds in such manner as may be prescribed.

Administration and utilisation of Fund or Funds.

(2) The Fund or Funds shall be utilised exclusively for the measures specified in sub-section (1) of section 9.

(3) The Central Government shall be responsible for the coordination and ensuring timely utilisation and release of sums in accordance with such criteria as may be prescribed.

CHAPTER V

INSPECTION OF SMALL AND MEDIUM ENTERPRISES AND RELATED MATTERS

15. Notwithstanding anything in relation to inspection contained in the Payment of Wages Act, 1936, the Employees' State Insurance Act, 1948, the Factories Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965 and the Payment of Gratuity Act, 1972, the inspection of small and medium enterprises shall be carried out in such manner and by such authority as may be prescribed:

Inspection of small and medium enterprises.

Provided that while prescribing the manner of inspection under this section, the Central Government shall have regard to the promotion of self-regulation or self-certification by the small enterprises and medium enterprises.

Maintenance of records and filing of returns by enterprises.

16. Notwithstanding anything contained in any enactment specified in section 15, every small and medium enterprise shall maintain such records, file such returns with such authority and in such forms as may be prescribed.

CHAPTER VI

DELAYED PAYMENTS TO SMALL ENTERPRISES

Liability of buyer to make payment.

17. Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed seventy-five days from the day of acceptance or the day of deemed acceptance.

Date from which and rate at which interest is payable.

18. Where any buyer fails to make payment of the amount to the supplier, as required under section 17, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at nine per cent. plus the bank rate notified by the Reserve Bank.

Recovery of amount due.

19. The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of section 18, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

Reference to Industry Facilitation Council.

20. Notwithstanding anything contained in section 19, any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that section and the provisions of the Arbitration and Conciliation Act, 1996 shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

26 of 1996.

Appeal.

21. No appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such court or, as the case may be, such authority.

Establishment of Industry Facilitation Council.

22. The State Government shall, by notification, establish one or more Industry Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

Composition of Industry Facilitation Council.

23. The Industry Facilitation Council shall consist of not less than three but not more than five members to be appointed from among the following categories, namely:—

(i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, small and medium enterprises; and

(ii) one or more office-bearers or representatives of small industry or enterprise associations in the State; or

(iii) one or more representatives of banks and financial institutions lending to small enterprises; or

(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

(2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Industry Facilitation Council.

(3) The composition of the Industry Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.

24. Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—

(i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(ii) the amount of interest paid by the buyer in terms of section 18, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;

(iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 25.

Requirement
to specify
unpaid amount
with interest
in the annual
statement of
accounts.

43 of 1961.

25. Notwithstanding anything contained in the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

Interest not to
be allowed as
deduction
from income.

26. The provisions of sections 17 to 25 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Over-riding
effect.

CHAPTER VII

MISCELLANEOUS

27. (1) The Central Government or the State Government may appoint such officers with such designations and such other employees as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.

Appointment
of officers and
other
employees.

(2) The Officers appointed under sub-section (1) may, for the purposes of this Act, by order require any person to furnish such information, in such form, as may be prescribed.

28. (1) Whoever intentionally contravenes or attempts to contravene or abets the contravention of any of the provisions contained in sub-section (1) of section 8 or section 16 or sub-section (2) of section 27 shall be punishable —

Penalty for
contravention
of section 8 or
section 16 or
section 24 or
section 27.

(a) in the case of the first conviction, with fine which may extend to rupees one thousand; and

(b) in the case of any second or subsequent conviction, with fine which shall not be less than rupees one thousand but may extend to rupees ten thousand.

(2) Where a buyer contravenes the provisions of section 24, he shall be punishable with a fine which shall not be less than rupees ten thousand.

29. No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Jurisdiction of
courts.

Power to make rules.

30. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office of the members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of functions by the members of the Board under sub-section (4) of section 3;

(b) the powers and functions of the Member-Secretary under section 6;

(c) the manner in which the Fund may be administered under sub-section (1) of section 14;

(d) the criteria based on which sums may be released under sub-section (3) of section 14;

(e) the manner in which and the authority by which inspection shall be carried under section 15;

(f) the records which may be maintained and the form in which returns be filed, the method of filing of returns, and the authority with whom the returns be filed under section 16;

(g) the information to be furnished and the form in which it is to be furnished under sub-section (2) of section 27; and

(h) any other matter which is to be or may be prescribed under this Act.

(3) Every notification issued under sub-section (1) of section 9 and every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

Power to make rules by State Government.

31. (1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the composition of the Industry Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Industry Facilitation Council under sub-section (3) of section 23;

(b) any other matter which is to be or may be, prescribed under this Act.

(3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

Power to remove difficulties.

32. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

33. (1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 is hereby repealed.

Repeal of Act
32 of 1993.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Small scale industry is at present defined by notification under section 11B of the Industries (Development and Regulation) Act, 1951. Section 29B of the Act provides for notifying reservation of items for exclusive manufacture in the small scale industry sector. Except for these two provisions, there exists no legal framework for this dynamic and vibrant sector of the country's economy. Many Expert Groups or Committees appointed by the Government from time to time as well as the small scale industry sector itself have emphasised the need for a comprehensive Central enactment to provide an appropriate legal framework for the sector to facilitate its growth and development. Emergence of a large services sector assisting the small scale industry in the last two decades also warrants a composite view of the sector, encompassing both industrial units and related service entities. The world over, the emphasis has now been shifted from "industries" to "enterprises". Added to this, a growing need is being felt to extend policy support for the small enterprises so that they are enabled to grow into medium ones, adopt better and higher levels of technology and achieve higher productivity to remain competitive in a fast globalisation area. Thus, as in most developed and many developing countries, it is necessary that in India too, the concerns of the entire small and medium enterprises sector are addressed and the sector is provided with a single legal framework. As of now, the medium industry or enterprise is not even defined in any law.

2. In view of the above-mentioned circumstances, the Bill aims at facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and seeks to—

- (a) provide for statutory definitions of "small enterprise" and "medium enterprise".
- (b) provide for the establishment of a National Small and Medium Enterprises Board, a high-level forum consisting of stakeholders for participative review of and making recommendations on the policies and programmes for the development of small and medium enterprises.
- (c) provide for classification of small and medium enterprises on the basis of investment in plant and machinery, or equipment and establishment of an Advisory Committee to recommend on the related matter.
- (d) empower the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises.
- (e) empower the State Governments to specify, by notification, that provisions of the labour laws specified in clause 9(2) will not apply to small and medium enterprises employing up to fifty employees with a view to facilitating the graduation of small enterprises to medium enterprises;
- (f) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India.
- (g) empower the Central and State Governments to notify preference policies in respect of procurement of goods and services, produced and provided by small enterprises, by the Ministries, departments and public sector enterprises.

(h) empowering the Central Government to create a Fund or Funds for facilitating promotion and development and enhancing the competitiveness of small enterprises and medium enterprises.

(i) empower to prescribe harmonised, simpler and streamlined procedures for inspection of small and medium enterprises under the labour laws enumerated in clause 15, having regard to the need to promote self-regulation or self-certification by such enterprises.

(j) prescribe for maintenance of records and filing of returns by small and medium enterprises with a view to reduce the multiplicity of often-overlapping types of returns to be filed;

(k) Make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 6th May, 2005.

MAHABIR PRASAD.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA**

[Copy of letter No. 2(3)/2005-SSI Bd. & Pol. Vol-II, dated the 10th May, 2005 from Shri Mahabir Prasad, Minister of Small Scale Industries and Agro & Rural Industries to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Small and Medium Enterprises Development Bill, 2005, has recommended the introduction and consideration of the Bill in Lok Sabha under article 117(1) and (3) of the Constitution of India.

Notes on Clauses

Clause 2 of the Bill seeks to defines the various expressions used in the Bill.

Clause 3 seeks to provide for the establishment of the National Small and Medium Enterprises Board with its head office in Delhi. It further lays down that the Minister in charge of the Ministry or Department of the Central Government having administrative control of the small and medium enterprises shall be the *ex-officio* Chairperson. In addition, it lays down the composition of the Board consisting of the Vice-Chairperson, Member-Secretary, and 27 members representing various stakeholders. This clause, *inter alia*, also contains provisions regarding the term of office of the members of the Board, the manner of filling vacancies, frequency of meetings of the Board, association of other persons with the Board and invitation to Ministers of the State Governments to attend its meetings.

Clause 4 seeks to enumerates the grounds for removal of a member of the Board from it and also specifies the procedures to be followed in such cases.

Clause 5 seeks to specify the functions of the Board.

Clause 6 seeks to empower the Central Government to prescribe the powers and functions of Member-Secretary of the Board.

Clause 7 seeks to classify “small enterprises” and “medium enterprises”, based on investment in plant and machinery, equipment. It also provides in detail for constitution of an Advisory Committee, its composition, role and matters to be considered by it while communicating its recommendations to the Central Government. It also empowers the Central Government, while classifying any class or classes of enterprises as small enterprise or medium enterprise, to vary the criterion of investment and to consider other criteria or standards specified in this clause and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

Clause 8 seeks to lay down the requirement for filing of memorandum of small enterprise or medium enterprise with the authority specified by the State Government or the Central Government under the provisions of this clause. It also empowers the Central Government, to notify, the procedure of filing of the memorandum and the authority with which the memorandum shall be filed by a medium enterprise. This clause also confers powers on the State Government to notify the authority with which a small enterprise may file the memorandum. It also enables the Central Government to notify the procedure to be followed by the above-mentioned authorities for the purposes of this clause.

Clause 9 seeks to enable the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small enterprises and medium enterprises. It also empowers a State Government to provide, by notification, that the provisions of the Employers’ Liability Act, 1938, the Weekly Holidays Act, 1942, the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and the Apprentices Act, 1961 shall not apply to small and medium enterprises employing up to fifty employees in that State.

Clause 10 seeks to provide for the credit facilities to the small and medium enterprises as may be specified in the guidelines or instructions issued by the Reserve Bank of India.

Clause 11 seeks to empower the Central Government or the State Government to notify preference policies in respect of procurement of goods and services, produced and provided by small enterprises, by its Ministries, departments or its aided institutions and public sector enterprises.

Clause 12 seeks to enable the Central Government to constitute, by notification, one or more Funds and credit thereto any grants made to the Central Government under the provisions of clause 13.

Clause 13 seeks to empower the Central Government to credit to the Fund or Funds, such sums of money as the Government may provide after due appropriation made by Parliament by law in this behalf.

Clause 14 seeks to empower the Central Government to administer the Fund or Funds in such manner, and also entrusts that government with the responsibility for the coordination and ensuring timely utilization and release of sums with such criteria, as may be prescribed.

Clause 15 seeks to provide that notwithstanding anything in relation to inspection contained in the Payment of Wages Act, 1936, the Employees' State Insurance Act, 1948, the Factories Act, 1948, the Employee's Provident Fund and Miscellaneous Provision Act, 1952, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965 and the Payment of Gratuity Act, 1972, the Inspection of a small and medium enterprises shall be carried out in such manner, with regard to the promotion of self-regulation or self-certification by the small and the medium enterprises, and by such authority, as may be prescribed.

Clause 16 seeks to provide that every small and medium enterprise responsible for maintenance of such records, filing of such returns with such authority and in such forms, as may be prescribed.

Clause 17 seeks to specify the liability of buyer of goods and services from a supplier to make payment therefor on or before the dated agree upon between the two parties in writing or, where there is no agreement in this behalf, before the appointed day. The proviso to this clause seeks to limit the period agreed upon between the supplier and the buyer in writing to seventy-five days from the day of acceptance or the day of deemed acceptance.

Clause 18 seeks to specify the date from which and the rate at which interests will be payable by the buyer to the supplier in case of the former failing to make payments of the amount to the supplier, as required under section 17.

Clause 19 seeks to make the amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of section 18, recoverable by way of a suit or other proceeding under law.

Clause 20 seeks to provide for the jurisdiction of the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in clause 19.

Clause 21 seeks to debar any court or other authority from entertaining an appeal against any decree, award or any other order unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or other order.

Clause 22 seeks to makes it mandatory upon each State Government to establish one or more Industry Facilitation Councils for the purposes of this Bill.

Clause 23 seeks to lay down in detail the structure of the Industry Facilitation Council consisting of not less than three but not more than five members. Further, it empowers the State Government to prescribe the composition of the Industry Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions.

Clause 24 seeks to provide details of the information required to be submitted by any buyer in this annual statement of accounts, where such buyer is required to get his annual accounts audited under any law for the time being in force.

Clause 25 seeks to provide to disallow, for the purposes of computation of income under the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, under or in accordance with the provisions of the proposed legislation.

Clause 26 seeks to give the provisions of clauses 17 to 25 an over-riding effect over anything inconsistent therewith in any other law for the time being in force.

Clause 27 seeks to empower the Central Government or the State Government to appoint officers and other employees for the purposes of this Act and to entrust to them such of the powers and functions as it may deem fit. This clause further empowers the officers so appointed to require, by order, any persons to furnish such information, in such form, as may be prescribed.

Clause 28 seeks to lay down penalty for contravention of clause 8 or clause 16 or clause 24 or clause 27.

Clause 29 seeks to specify that no court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this legislation.

Clause 30 seeks to empower the Central Government to make rules for carrying out the provisions of this Act and also provide that every notification issued under sub-clause (1) of clause 9 and every rule made by the Central Government under this clause shall be laid before each House of Parliament.

Clause 31 seeks to empowers the State Government to make rules for carrying out the provisions of this Act and also specifies that the rule made under this clause shall be laid before the State Legislature.

Clause 32 seeks to empower the Central Government to remove difficulties which may arise in giving effect to the provisions of this Bill and also provide that every order made under this clause be laid before each House of Parliament.

Clause 33 seeks to repeals the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 as the provisions of that Act have been suitably incorporated in the Bill.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of National Small and Medium Enterprises Board. The Bill further provides that the Board shall meet at least once in every three months in a year. In addition, sub-clause (7) of the Bill provides that Board may associate itself with any person or persons whose assistance or advice it may desire. This Board will replace the currently existing non-statutory small scale industries (SSI) Board consisting of one hundred and one persons, including forty-seven non-official members which normally meets once or twice in a year. The expenditure usually incurred on holding a meeting of this Board is about four to five lakh rupees. In view of the reduced size of the Board under the Bill, coupled with the increased frequency of its meetings, it is expected that the total recurring expenditure on the Board will be about fifteen lakh rupees in a year. Since the functions of the Board consist of review and advice through its meetings only, no other recurring or non-recurring expenditure is likely to be incurred on the Board. In any case, the expenses of the Board will be borne out of the usual budget grants of the Ministry of Small Scale Industries.

Clause 9 of the Bill empowers the Central Government to notify programmes, guidelines or instructions as it may deem fit for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises. Even now, Government has been implementing a large number of programmes for the development of small scale sector for which adequate budget provision is made every year. However, it is not possible at this juncture to give an exact estimate of the likely requirement of funds for the following years, as the amount required will depend on such programmes, guidelines or instructions as might be taken up or issued from time to time in pursuance of this provision. All such programmes, etc., will be finalised following the procedures laid down by the Government, including consultation with the Integrated Finance Wing or the Ministry of Finance, as necessary.

Clauses 12 and 13 contain provisions to enable the Central Government to constitute one or more Funds and, after due appropriation made by Parliament by law in this behalf, credit to the Fund or Funds by way of grants for the purposes of this legislation, such sums of money as the Government may consider necessary to provide. Again, it cannot be estimated in advance as to how much money will be required to create such Fund or Funds. In fact, the size of the Fund will be determined by its purpose and the quantum and the mode of disbursement required from it so as to meet the objects for which it will be created. However, the concerns of availability of budgetary resources, interest outgo, etc., can be adequately addressed as and when such a Fund is set up by the Central Government after due consultations with Ministry of Finance and after due appropriation made by Parliament by law in this behalf.

Clause 22 makes the State Governments responsible to establish Industry Facilitation Council in each State. This clause is actually based on clause 7A of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (32 of 1993) which is sought to be amalgamated in the Bill. Therefore, this clause is not likely to entail any additional financial expenditure for this purpose over and above what is being already incurred.

Clause 27 empowers the Central Government or State Government to appoint such officers and other employees as it thinks fit for the purposes of this Act. At present, both the Central and State Governments have Ministries, Departments, Directorates, etc., dealing with promotion of small scale industries which can discharge the duties and functions provided under this Act. Therefore, there would be no necessity to appoint any additional officers and staff due to enactment of this Bill. Hence, this provision is also not likely to lead to any additional financial burden to the Government.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 30 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. The matters in respect of which rules may be made relate, among others, to the term of office of the members of the Board, the manner of filling vacancies, the procedures to be followed in discharge of functions by the members of the Board and the powers and functions of the Member-Secretary under the provisions in clauses 3 and 6. Rules will also be required to be framed under clause 14 for administration of the Fund and the criteria based on which sums may be released from it. The manner in which and the authority by which inspection will be carried out under section 15 and the records which may be maintained and the form in which the returns will have to be filed and other related matters under clause 16 are also proposed to be prescribed through rules. Rules will also have to be framed on the information to be furnished and the form in which it is to be furnished under sub-clause (2) of clause 27.

Clause 31 seeks to empower the State Government to make rules to carry out the provisions of the Bill and in particular, such rules may provide for the composition of the Industry Facilitation Council, the manner of filling vacancies of the members and the procedures to be followed in the discharge of their function by the members of the Industry Facilitation Council under sub-clause (3) of clause 23.

The matter in respect of which rules may be made are matters of procedure and administrative details and it is not practicable to provide for all the matters in the Bill. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 74 OF 2005

A Bill to amend the Income-tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

1. (1) This Act may be called the Taxation Laws (Amendment) Act, 2005.

Short title
and
commencement.

(2) Save as otherwise provided in this Act, sections 2 to 16 (except sections 2, 7 and 11 to 16) shall be deemed to have come into force on the 1st day of April, 2005.

CHAPTER II**DIRECT TAXES****Income-tax**

43 of 1961.

2. In section 2 of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act), in clause (44), after the words "powers of a Tax Recovery Officer", the following shall be inserted, namely:—

Amendment
of section 2.

"and also to exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under this Act and which may be prescribed".

Amendment
of section 10.

3. In section 10 of the Income-tax Act, with effect from the 1st day of April, 2006,—

(a) after clause (23BBE), the following clause shall be inserted, namely:—

“(23BBF) any income of the North-Eastern Development Finance Corporation Limited, being a company formed and registered under the Companies Act, 1956:

1 of 1956.

Provided that in computing the total income of the North-Eastern Development Finance Corporation Limited, the amount to the extent of—

(i) twenty per cent. of the total income for assessment year beginning on the 1st day of April, 2006;

(ii) forty per cent. of the total income for assessment year beginning on the 1st day of April, 2007;

(iii) sixty per cent. of the total income for assessment year beginning on the 1st day of April, 2008;

(iv) eighty per cent. of the total income for assessment year beginning on the 1st day of April, 2009;

(v) one hundred per cent. of the total income for assessment year beginning on the 1st day of April, 2010 and any subsequent assessment year or years,

shall be included in such total income;”;

(b) in clause (23C),—

(i) in the eighth proviso, for the words, brackets and letters “notification issued by the Central Government under sub-clause (iv) or sub-clause (v) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years”, the words, brackets, figures and letters “notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years” shall be substituted;

(ii) after the eighth proviso, the following provisos shall be inserted, namely:—

“Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:

Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.”.

4. In section 12A of the Income-tax Act, in clause (b), for the words and figures "the provisions of section 11 and section 12 exceeds fifty-thousand rupees in any previous year", the words and figures "the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year" shall be substituted with effect from the 1st day of April, 2006.

Amendment
of section
12A.

5. In the Income-tax Act, in section 35, in sub-section (1), with effect from the 1st day of April, 2006,—

(a) in clause (ii), for the proviso, the following proviso shall be substituted, namely:—

"Provided that such association, university, college or other institution for the purposes of this clause—

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government,";

(b) in clause (iii), for the proviso, the following proviso shall be substituted, namely:—

"Provided that such university, college or other institution for the purposes of this clause—

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such university, college or other institution is specified as such by notification in the Official Gazette, by the Central Government,";

(c) in the second proviso, for the word "authority", the word "Government" shall be substituted;

(d) in the third proviso, for the words, brackets and letters "notification issued by the Central Government under clause (ii) or clause (iii) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years", the words, brackets, figures and letters "notification issued, by the Central Government under clause (ii) or clause (iii), before the date on which the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years" shall be substituted;

(e) after the third proviso, the following proviso shall be inserted at the end, namely:—

"Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, every notification under clause (ii) or clause (iii) shall be issued or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received by the Central Government:".

6. In section 40 of the Income-tax Act, in clause (a), in sub-clause (ia), with effect from the 1st day of April, 2006,—

Amendment
of section 40.

(a) after the words "commission or brokerage.", the words "rent, royalty," shall be inserted;

(b) in the *Explanation*, after clause (iv), the following clauses shall be inserted at the end, namely:—

(v) "rent" shall have the same meaning as in clause (i) to the *Explanation* to section 194-I;

(vi) "royalty" shall have the same meaning as in *Explanation* 2 to clause (vi) of sub-section (1) of section 9;".

Amendment
of section
40A.

7. In section 40A of the Income-tax Act in sub-sections (3) and (4), for the words “a crossed cheque drawn on a bank or by a crossed bank draft”, wherever they occur, the words “an account payee cheque drawn on a bank or account payee bank draft” shall be substituted.

Amendment
of section 56.

8. In section 56 of the Income-tax Act, in sub-section (2),—

(a) in clause (v),—

(i) after the words, letters and figures “after the 1st day of September, 2004”, the words, letters and figures “but before the 1st day of April, 2006” shall be inserted with effect from the 1st day of April, 2006;

(ii) in the proviso, after clause (d), the following clauses shall be inserted, namely:—

“(e) from any local authority as defined in the *Explanation* to clause (20) of section 10; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(g) from any trust or institution registered under section 12AA.”;

(b) after clause (v) and the *Explanation*, the following shall be inserted with effect from the 1st day of April, 2007, namely:—

“(vi) where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu undivided family, in any previous year from any person or persons on or after the 1st day of April, 2006, the whole of the aggregate value of such sum:

Provided that this clause shall not apply to any sum of money received —

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer; or

(e) from any local authority as defined in the *Explanation* to clause (20) of section 10; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(g) from any trust or institution registered under section 12AA.

Explanation.—For the purposes of this clause, “relative” means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) brother or sister of either of the parents of the individual;

(v) any lineal ascendant or descendant of the individual;

(vi) any lineal ascendant or descendant of the spouse of the individual;

(vii) spouse of the person referred to in clauses (ii) to (vi).”.

9. In section 139 of the Income-tax Act, with effect from the 1st day of April, 2006,—

(a) in sub-section (4C), in clause (e),—

(i) for the word, brackets and figures “sub-clause (vi)”, the words, brackets and figures, “sub-clause (iiiad) or sub-clause (vi)” shall be substituted;

Amendment
of section
139.

(ii) for the word, brackets and figures "sub-clause (*via*)", the words, brackets and figures, "sub-clause (*iiiae*) or sub-clause (*via*)" shall be substituted;
 (b) after sub-section (4C), the following sub-section shall be inserted, namely:—

(4D) Every university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35, which is not required to furnish return of income or loss under any other provision of this section, shall furnish the return in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).".

10. In section 143 of the Income-tax Act, in sub- section (3), after the proviso, the following proviso shall be inserted, with effect from the 1st day of April, 2006, namely:—

Amendment
of section
143.

"Provided further that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was approved, he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer.".

11. In section 155 of the Income-tax Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment
of section
155.

"(1A) Where in the assessment for any year, the deduction under section 10A or section 10B or section 10BA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee with the approval of the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 10A or section 10B or section 10BA, as the case may be, in respect of such income or part thereof as is so received in, or brought into, India, and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.".

12. In section 194-I of the Income-tax Act, in the *Explanation*, for clause (i), the following clause shall be substituted, namely:—

Amendment
of section
194-I.

(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee;".

Amendment
of section
194J.

13. In section 194 J of the Income-tax Act, in sub-section (1),—

- (i) in clause (b), the word “or” shall be inserted at the end;
- (ii) after clause (b), the following clauses shall be inserted, namely:—
 - “(c) royalty, or
 - (d) any sum referred to in clause (va) of section 28,”;
- (iii) in the first proviso, in clause (B),—
 - (a) in sub-clause (ii), for the words and brackets “clause (b):”, the words and brackets “clause (b), or” shall be substituted;
 - (b) after sub-clause (ii), the following clauses shall be inserted, namely:—
 - “(iii) twenty thousand rupees, in the case of royalty referred to in clause (c), or
 - (iv) twenty thousand rupees, in the case of sum referred to in clause (d);”;
 - (iii) in the *Explanation*, after clause (b), the following clause shall be inserted, namely:—
 - “(ba) “royalty” shall have the same meaning as in *Explanation 2* to clause (vi) of sub-section (1) of section 9;”.

Amendment
of section
246A.

14. In section 246A of the Income-tax Act, in sub-section (1), after clause (j), the following clause shall be inserted, namely:—

- “(ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;”.

Amendment
of section
275.

15. In section 275 of the Income-tax Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264 :

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed—

(a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed:

Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section.”.

16. In Income-tax Act, for section 288B, the following section shall be substituted, namely:—

“288B. Any amount payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five the amount shall be reduced to the next lower amount which is a multiple of ten.”

Substitution of new section for section 288B.

Rounding off amount payable and refund due.

52 of 1962.

17. In the Customs Act, 1962 (hereafter referred to as the Customs Act), in section 17, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment of section 17.

“(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be.”

18. In section 18 of the Customs Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

Amendment of section 18.

“(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.”

Amendment
of section 28.

19. In section 28 of the Customs Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) When any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under proviso to sub-section (1) by the proper officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 28AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.”;

(b) to sub-section (2), the following provisos shall be added, namely:—

“Provided that if such person has paid the duty in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice are served under sub-section (1) shall, without prejudice to the provisions of sections 135, 135A and 140, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the proper officer shall determine the amount of duty or interest not being in excess of the amount partly due from such person.”.

Insertion of
new section
28BA.

20. After section 28B of the Customs Act, the following section shall be inserted, namely:—

Provisional
attachment to
protect
revenue in
certain cases.

“28BA. (1) Where, during the pendency of any proceeding under section 28 or section 28B, the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (2) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Customs may, for reasons to be recorded in writing, extend aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement of case under section 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 127C is made shall be excluded from the period specified in the preceding proviso.”.

Amendment
of section 104.

21. In section 104 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If an officer of Customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.”.

22. In section 108 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any gazetted officer of Customs duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.”.

23. After section 110 of the Customs Act, the following section shall be inserted, namely:—

“110A. Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.”.

24. After section 114A of the Customs Act, the following section shall be inserted, namely:—

“114AA. If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”.

25. In section 124 of the Customs Act, in clause (a), for the words “writing informing”, the words “writing with the prior approval of the officer of Customs not below the rank of a Deputy Commissioner of Customs, informing” shall be substituted.

26. In section 129D of the Customs Act, in sub-section (2), for the words “such authority”, the words “such authority or any officer of Customs subordinate to him” shall be substituted.

27. In section 132 of the Customs Act, for the words “six months”, the words “two years” shall be substituted.

28. In section 133 of the Customs Act, for the words “six months”, the words “two years” shall be substituted.

29. In section 137 of the Customs Act, in sub-section (1), for the words and figures “section 135”, the words, figures and letter “section 135 or section 135A” shall be substituted.

30. After section 154A of the Customs Act, the following section shall be inserted, namely:—

“154B. (1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under this Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Commissioner (Appeals) under section 128 or the Appellate Tribunal under section 129A, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.”.

Amendment
of section
108.

Insertion of
new section
110A.

Provisional
release of
goods,
documents
and things
seized
pending
adjudication.

Insertion of
new section
114AA.

Penalty for
use of false
and incorrect
material.

Amendment
of section
124.

Amendment
of section
129D.

Amendment
of section
132.

Amendment
of section
133.

Amendment
of section
137.

Insertion of
new section
154B.

Publication
of
information
respecting
persons in
certain cases.

Customs tariff

Amendment
of section 8B
of Act 51 of
1975.

31. In section 8B of the Customs Tariff Act, 1975, in the first proviso to sub-section (1), for the words "all such countries", the words "developing countries each with less than three per cent. import share" shall be substituted.

Excise

Amendment
of section 11A.

32. In section 11A of the Central Excise Act, 1944 (hereafter referred to as the Central Excise Act),—

1 of 1944.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) When any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, by such person or his agent, to whom a notice is served under proviso to sub-section (1) by the Central Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 11AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.";

(b) to sub-section (2), the following provisos shall be added, namely:—

"Provided that if such person has paid the duty in full together with, interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice are served under sub-section (1) shall, without prejudice to the provisions of sections 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the Central Excise Officer, shall determine the amount of duty or interest not being in excess of the amount partly due from such person."

33. After section 11DD of the Central Excise Act, the following section shall be inserted, namely:—

"11DDA. (1) Where, during the pendency of any proceeding under section 11A or section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement of case under section 32E is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 32F is made shall be excluded from the period specified in the preceding proviso."

34. In section 35E of the Central Excise Act, in sub-section (2), for the words "such authority", the words "such authority or any Central Excise Officer subordinate to him" shall be substituted.

52 of 1962.

Insertion of
new section
11DDA.

Provisional
attachment to
protect
revenue in
certain cases.

Amendment
of section
35E.

35. After section 37D of the Central Excise Act, the following section shall be inserted, namely:—

“37E. (1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under this Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Commissioner (Appeals) under section 35 or the Appellate Tribunal under section 35B, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.”.

Insertion of new section 37E

Publication of information respecting persons in certain cases.

36. (1) In the Central Excise Rules, 2002, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, rule 16 thereof as published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. G.S.R. 143(E), dated the 1st March, 2002 shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in column (2) of the Schedule for the period specified in column (3) of that Schedule against the rule specified in column (1) of that Schedule.

Amendment of rule 16 of the Central Excise Rules, 2002.

(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 29th day of May, 2003 and ending with the 8th day of July, 2004 under the rule as amended by sub-section (1), shall be deemed to be and always to have been, for all the purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(3) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence, which would not have been so punishable if this section had not come into force.

CHAPTER IV

MISCELLANEOUS

37. In section 25 of the Central Sales Tax Act, 1956, for the words and figures “under section 19”, the words, brackets and figures “by notification under sub-section (1) of section 24” shall be substituted.

Amendment of section 25 of Act 74 of 1956.

THE SCHEDULE
(See section 36)

Provisions of the Central Excise Rules, 2002 to be amended	Amendment	Period of effect of amendment
(1)	(2)	(3)
Rule 16 of the Central Excise Rules, 2002 as published vide notification No. GS.R. 143 (E), dated the 1st March, 2002.	<p>In the Central Excise Rules, 2002, in rule 16, after sub-rule (3), the following provisos shall be inserted, namely:—</p> <p style="padding-left: 40px;">‘Provided that for the purposes of this rule, “assessee” shall include wire drawing unit, which has cleared the goods on payment of an amount equal to the duty at the rate applicable to drawn wire on the date of removal and on the value determined under relevant provisions of the Act and the rules made thereunder:</p> <p style="padding-left: 40px;">Provided further that the amount paid under the first proviso shall be allowed as CENVAT credit as if it was duty paid by the assessee who removes the goods.’</p>	<p style="text-align: right;">29th day of May, 2003 to 8th day of July, 2004 (both days inclusive).</p>

STATEMENT OF OBJECTS AND REASONS

Several suggestions on amendments to Direct Tax Laws and Indirect Tax Laws have been received in the course of the current year and after due consideration, some of these have been accepted. It is proposed to take up these suggestions in this Bill, which will thereby supplement the proposals made through the Finance Bill, 2005. The Bill, *inter alia*, proposes to carry out certain amendments in the Income-tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956 with the object of rationalizing and simplifying certain procedures, widening of tax base and plugging loopholes leading to leakage of revenue.

2. The Bill seeks to amend the Income-tax Act, 1961 so as to streamline the approval and monitoring process for certain charitable entities, scientific research associations, etc., prescribing filing of return by certain charitable entities with aggregate annual receipts below one crore rupees, requiring payment exceeding twenty thousand rupees by way of an account payee cheque or account payee bank draft, prescribing TDS on renting of plant and machinery, equipment, royalty and non-compete fee and phased withdrawal of exemption to North-Eastern Finance Development Corporation Limited over the next five years. It is further proposed to exclude (from the previous year 2004-2005) any sum received from a charitable entity or a local authority without consideration from the ambit of 'income from other sources'. It is also proposed to aggregate the said sums received without consideration (from the previous year 2006-2007) and to enhance the existing limit of twenty-five thousand rupees to fifty thousand rupees for the purpose of inclusion under 'income from other sources'. Certain other amendments such as rounding off of demands or refunds to the nearest multiple of ten rupees, empowering the Tax Recovery Officer to exercise limited powers of the Assessing Officer, allowing for revision of penalty orders on receipt of appellate orders regarding assessment, etc., are also proposed to be carried out in the Income-tax Act.

3. The Bill also seeks to carry out certain amendments in the Customs Act, 1962, Customs Tariff Act, 1975 and Central Excise Act, 1944 which *inter alia* facilitates voluntary payment of tax dues so as to provide a mechanism for resolving disputes at the earliest, to facilitate recovery of amount due as revenue to the Government and to incorporate certain measures to curb evasion of Customs and Central Excise duties.

4. The Bill also seeks to amend the Central Sales Tax Act, 1956 so as to expeditiously and smoothly resolve inter-State disputes, regarding levy of Central Sales Tax by the State Governments by ensuring that all pending proceedings are transferred to the Authority notified under sub-section (1) of section 24 of the said Act.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions of the Bill.

NEW DELHI;
The 9th May, 2005.

P. CHIDAMBARAM.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. No. 4/TLAB/2005-TPL, dated the 9th May, 2005 from Shri P. Chidambaram, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Taxation Laws (Amendment) Bill, 2005 recommends under Article 117(1) and (3) and 274(1) of the Constitution of India, introduction and consideration of the above Bill by the Lok Sabha.

Notes on clauses

Income-tax

Clause 2 of the Bill seeks to amend section 2 of the Income-tax Act relating to definitions.

The existing provisions contained in clause (44) of the said section provides that “Tax Recovery Officer” means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer.

It is proposed to amend the said clause so as to provide that the Tax Recovery Officer may also exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under the Income-tax Act and which may be prescribed.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 3 seeks to amend section 10 of the Income-tax Act relating to incomes which shall not be included in total income.

Under the existing provision contained in section 10 of the Income-tax Act, any income falling within the various clauses of that section shall not be included in computing the total income of a previous year of any person.

It is proposed to insert a new clause (23BBE) in section 10 so as to provide that any income of the North-Eastern Development Finance Corporation Limited, a company formed and registered under the Companies Act, 1956, shall not be included in computing its total income. It is further provided that the income of the North-Eastern Development Finance Limited shall be included in the total income to the extent of the percentage of its total income specified in the proposed clause (23BBE).

Under the existing provisions contained in the eighth proviso to clause (23C) of section 10, any notification issued by the Central Government under sub-clause (iv) or sub-clause (v) of the said clause (23C), shall, at any one time, have effect for any assessment year or years not exceeding three assessment years including an assessment year or years commencing before the date on which such notification is issued.

It is proposed to amend the eighth proviso to clause (23C) of the said section so as to provide that where the notification is issued under sub-clause (iv) or sub-clause (v) of said clause (23C) before the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, such notification shall continue to be effective for a period of three assessment years including an assessment year or years not exceeding three assessment years commencing before the date on which such notification is issued.

Under the existing provisions contained in the first proviso to clause (23C) of section 10, the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of said clause (23C) shall make an application in the prescribed form and in the manner to the prescribed authority for the purpose of grant of exemption under those sub-clauses. However, no time limit has been provided for grant of approval or issue of notification under the said sub-clauses.

It is proposed to insert ninth proviso after the eighth proviso so as to provide that where any application for issue of notification or grant of approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) is filed on or after the date on which this Bill receives the assent of the President, every such notification shall be issued or order granting approval or order rejecting the application shall be passed before the expiry of twelve months from the end of the month in which the application was received.

Under the existing provisions contained in second proviso of clause (23C), the Central Government or the prescribed authority before notifying or approving the entities referred to

in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) may call for such documents including audited annual accounts. However, there is no stipulation for getting their accounts audited by an accountant or furnishing the audit report along with the return of income.

It is further proposed to insert tenth proviso after the ninth proviso as so inserted so as to provide that where the total income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses of clause (23C), exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or university or other educational institution or hospital or other medical institution shall get its accounts audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the audited accounts and the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

These amendments will take effect from 1st day of April, 2006 and will, accordingly, apply to assessment year 2006-2007 and subsequent years.

Clause 4 seeks to amend section 12A of the Income-tax Act relating to conditions as to registration of trusts, etc.

Under the existing provisions contained in section 12A of the Income-tax Act, where the total income of the trust or institution as computed under that Act without giving effect to the provisions of sections 11 and 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year shall be audited and such audit report shall be furnished along with the return of income.

It is proposed to amend the said section so as to provide that the accounts of the trust or institution for that year shall be audited and such audit report shall be furnished along with the return of income if the total income of such trust or institution exceeds the maximum amount which is not chargeable to income-tax in any previous year.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 5 seeks to amend section 35 of the Income-tax Act relating to expenditure on scientific research.

Under the existing provisions contained in the proviso to clause (ii) and the proviso to clause (iii) of sub-section (1) of section 35 of the Income-tax Act, the Central Government grants the approval to an association, university, college or other institution. These provisions do not provide for the manner, guidelines and the conditions subject to which approval is required to be granted.

It is proposed to amend the proviso to clause (ii) and the proviso to clause (iii) of sub-section (1) of section 35 so as to empower the Central Board of Direct Taxes to lay down, by rules, the manner in which an association, university, college or other institution is to be granted approval and the guidelines and conditions to be fulfilled for grant of such approval by the Central Government.

Under the second proviso to the aforesaid sub-section (1), the Central Government before granting approval may call for any documents or information and may also make such inquiries as it may deem necessary. Under the third proviso to the aforesaid sub-section (1), the approval granted at any one time has effect for three assessment years.

It is proposed to amend the second proviso to the said sub-section (1) so as to provide that the Central Government may make such inquiries as it may deem necessary. It is further proposed to amend the third proviso to the said sub-section (1) so as to provide that there would be no requirement for renewal of the approval where the approval is granted on or after the date on which the Bill receives assent of the President, and any approval granted before that date shall remain effective for the period for which the approval was granted. It is also proposed to provide for disposing the application for approval within twelve months of receipt of the same.

This amendment will take effect from the 1st day of April, 2006 and will, accordingly apply in relation to the assessment year 2006-07 and subsequent years.

Clause 6 seeks to amend section 40 of the Income-tax Act relating to amounts not deductible.

Under the existing provisions contained in sub-clause (ia) of clause (a) of section 40, non-deduction of tax on payment of interest, commission or brokerage, fees for professional services or fees for technical services, or amounts payable to a contractor or sub-contractor, results in the disallowance of the sum, in the computation of income of the payer, on which tax is required to be deducted under Chapter XVII-B.

It is proposed to amend sub-clause (ia) of clause (a) of section 40 so as to extend the provisions thereof to payments of royalty and rent. It is also proposed to provide for the definition of the terms "royalty" and "rent" in the explanation to the sub-clause.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 7 seeks to amend section 40A of the Income-tax Act relating to expenses or payments not deductible in certain circumstances.

Under the existing provisions contained in sub-section (3) and sub-section (4) of section 40A, it is provided that any payment exceeding twenty thousand rupees not made by way of a crossed cheque or crossed bank draft shall attract a disallowance to the extent of twenty per cent. of such sum, in the computation of income of the payer.

It is proposed to amend sub-section (3) and sub-section (4) so as to provide that a disallowance to the extent of twenty per cent. of the sum of payment shall be made where any payment exceeding the limit of twenty thousand rupees is made otherwise than by an account payee cheque or account payee bank draft.

These amendments will take effect from the date on which the Bill receives assent of the President.

Clause 8 seeks to amend section 56 of the Income-tax Act relating to income from other sources.

Under the existing provision contained in clause (v) of sub-section (2) of section 56 of the Income-tax Act, where any sum of money exceeding twenty five thousand rupees is received by an individual or a Hindu undivided family without consideration from any person on or after the 1st day of September, 2004, the whole of such sum is included in the total income in the hands of the recipient. As per the proviso to the said clause, this clause shall not apply to any sum of money received from any relative or on the occasion of the marriage of the individual or under a will or by way of inheritance or in contemplation of the death of the payer.

It is proposed to amend the proviso to clause (v) of sub-section (2) of section 56 so as to provide that this clause shall not apply to any sum of money received from any local authority as defined in the *Explanation* to clause (20) of section 10 or from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10 or from any trust or institution registered under section 12AA.

This amendment will take effect retrospectively from the 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years.

It is further proposed to amend clause (v) of sub-section (2) of section 56 so as to provide that the said clause shall be applicable to any sum of money exceeding twenty five thousand rupees received by an individual or Hindu undivided family without consideration from any person before the 1st day of April, 2006.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

It is also proposed to insert a new clause (vi) after clause (v) of sub-section (2) of section 56 so as to provide that where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration by an individual or a Hindu undivided family in any previous year from any person or persons on or after the 1st day of April, 2006, the whole of the aggregate value of such sum shall be included in the total income.

This amendment will take effect from 1st day of April, 2007 and will, accordingly, apply to assessment years 2007-2008 and subsequent years.

Clause 9 seeks to amend section 139 of the Income-tax Act relating to return of income.

Under the existing provisions contained in sub-clause (e) of clause (4C) of section 139 of the Income-tax Act, every fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) shall furnish their return of income if the total income without giving effect to the provisions of section 10 exceeds the maximum amount which is not chargeable to tax.

It is proposed to amend the said sub-clause (e) of clause (4C) of section 139 so as to provide that any university or other educational institution referred to in sub-clause (iiia) or any hospital or other medical institution referred to in sub-clause (iiiae) of clause (23C) of section 10 shall furnish their return of income if their total income without giving effect to the provisions of section 10 exceeds the maximum amount which is not chargeable to tax.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent assessment years.

Sub-clause (b) of the said clause seeks to insert sub-section (4D) requiring a university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 to furnish return of income.

This amendment will take effect from the 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 10 seeks to amend section 143 of the Income-tax Act relating to assessment.

It is proposed to insert a proviso after the first proviso in sub-section (3) of section 143 to provide that during the course of assessment proceedings the assessing officer should satisfy himself regarding the activities of the university, college or other institution whether these are being carried out in accordance with all or any of the guidelines and conditions subject to which approval was granted and may recommend to the Central Government to withdraw the approval.

This amendment will take effect from the 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 11 seeks to amend section 155 of the Income-tax Act relating to other amendments.

The existing provisions of section 155, *inter alia*, provide for rectification of an assessment order wherein deduction under section 80HHC, 80HHD, 80HHE, etc., has not been allowed on the ground that export income has not been received in convertible foreign

exchange in India, or having been received in convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee before completion of assessment and such income is subsequently brought into India with the approval of the Reserve Bank of India or such other competent authority within the prescribed time.

It is proposed to insert a new sub-section (*11A*) in the said section so as to provide that the Assessing Officer shall amend the order of assessment to allow deduction under section 10A or section 10B or section 10BA, as the case may be, in respect of export income or part thereof, which is received in, or brought into, India with the approval of the Reserve Bank of India or such other competent authority within the prescribed time. It is also proposed that the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years for rectification of assessment shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 12 seeks to amend section 194-I of the Income-tax Act relating to tax deduction at source on rent.

Under the existing provisions contained in section 194-I, tax is required to be deducted at source on payment of rent. The term "rent" has been defined in the *Explanation* to the said section to, *inter alia*, mean payment for use of any building (including factory building) together with furniture, fittings and the land appurtenant thereto whether or not such building is owned by the payee.

It is proposed to amend the definition of "rent" in the *Explanation* to section 194-I so as to provide that the provisions of the said section are applicable whether the items are rented separately or together. It is also proposed to expand the list of items by including machinery, plant and equipment. This section is proposed to be made applicable whether or not any or all of the items are owned by the payee.

This amendment will take effect from the date on which the Bill receives assent of the President.

Clause 13 seeks to amend section 194J of the Income-tax Act relating to fees for professional or technical services.

Under the existing provisions contained in sub-section (*I*), tax is required to be deducted at source on any payment of a sum to a resident exceeding twenty thousand rupees by way of fees for professional services or fees for technical services at the rate of five per cent. of such sum.

It is proposed to amend sub-section (*I*) of section 194J so as to include "royalty" and "any sum referred to in clause (va) of section 28" for applicability of the provisions of the said sub-section. The term "royalty" is proposed to be defined in the explanation to the section.

These amendments will take effect from the date on which the Bill receives assent of the President.

Clause 14 seeks to amend section 246A of the Income-tax Act relating to appealable orders before Commissioner (Appeals).

The existing provision of sub-section (*I*) of said section provides a list of orders against which an appeal may be filed to the Commissioner (Appeals) by an assessee who is aggrieved by any of the orders mentioned therein.

It is proposed to amend the said sub-section so as to provide that an appeal to the Commissioner (Appeals) may also be filed against an order imposing or enhancing penalty under sub-section (*1A*) of section 275.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 15 seeks to amend section 275 of the Income-tax Act relating to bar of limitation for imposing penalties.

Under the existing provisions contained in the proviso to the clause (a) of sub-section (1) of said section, in a case where the relevant assessment or other order is the subject matter of an appeal to the Commissioner (Appeals), and he passes the order on or after 1st June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings in the course of which action for imposition of penalty has been initiated, are completed or within one year from the end of the financial year in which order of Commissioner (Appeals) is received. Further, under the existing provisions contained in clause (b) of sub-section (1) of said section, in a case where the relevant assessment or other order is the subject matter of revision under section 263 or section 264, the penalty order shall be passed before the expiry of six months from the end of the month in which such order of revision is passed.

It is proposed to amend the said section so as to provide that in a case where the relevant assessment or other is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court or order of revision under section 263 or section 264. It is further proposed to provide that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 16 seeks to amend section 288B of the Income-tax Act relating to rounding off of tax, etc.

The existing provisions of the said section provides that the amount of tax (including tax deductible at source or payable in advance), interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of the Income-tax Act shall be rounded off to the nearest rupee.

It is proposed to substitute the said section by a new section so as to provide that any amount payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupees consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five the amount shall be reduced to the next lower amount which is a multiple of ten.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Customs

Clause 17 seeks to insert sub-section (5) in section 17 of the Customs Act, 1962 to provide for a speaking order within fifteen days from the date of assessment of a bill of entry

or a shipping bill in the event the assessing officer is of a view contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification under the Act.

Clause 18 seeks to insert sub-section (3), sub-section (4) and sub-section (5) to section 18 of the Customs Act, 1962 to provide for a mechanism to regularize the payments of duty short levied and interest thereon and duties that are to be refunded on finalisation of a provisional assessment.

Clause 19 seeks to —

(i) insert sub-section (1A) and provisos to sub-section (2) in section 28 of the Customs Act, 1962 so as to provide an option for voluntary payment within thirty days of receipt of a notice by an importer or exporter or any other person who has been issued with the show cause notice for evasion of duty on suppression of facts and wilful mis-statement or for by reason of collusion under the proviso to sub-section (1).

(ii) envisage a reduced amount of penalty at the rate of twenty-five per cent. of the duty specified in the notice, to avail, the option, such person may pay the duty specified in the said notice either in full along with interest and penalty at the rate of twenty-five per cent., of the duty paid or a part thereof along with interest and penalty at the rate of twenty-five per cent., of the duty so accepted and paid.

(iii) The scheme also envisages termination of proceedings against the co-noticee if any, to the proceeding in the event of payment of duty in full along with interest and twenty five per cent. of duty is paid as penalty within thirty days of receipt of the notice.

Clause 20 seeks to insert a new section 28BA in the Customs Act, 1962 to provide for provisional attachment of property belonging to a person to whom a notice is served under sub-section (1) of section 28 or sub-section (2) of section 28BA to protect the interest of revenue in certain cases.

Clause 21 seeks to amend section 104 of the Customs Act, 1962 to include within its ambit the power to arrest a person who has committed an offence punishable under section 132 or 133 or 135A or 136.

Clause 22 seeks to substitute sub-section (1) of section 108 of the Customs Act, 1962 to empower the Central Government to designate a gazetted officer of Customs to be empowered under the Act for the purpose of summoning any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry under the Act.

Clause 23 seeks to insert a new section 110A in the Customs Act, 1962 to facilitate provisional release of goods, documents and things seized pending adjudication.

Clause 24 seeks to insert a new section 114AA in the Customs Act, 1962 to provide for penalty for use of false and incorrect material, declaration, statement, etc., in the transaction of any business for the purpose of the Act.

Clause 25 seeks to amend section 124 of the Customs Act, 1962 to provide for prior approval of the officer of a rank not below that of a Deputy Commissioner of Customs before issuing a show cause notice proposing for confiscation of seized goods under the Act.

Clause 26 proposes to amend sub-section (2) of section 129D of the Customs Act to facilitate an officer other than the adjudicating authority to file an appeal before the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

Clause 27 proposes to amend section 132 of the Customs Act, 1962 to enhance the maximum punishment from six months to two years in cases, where a declaration, document, statement, etc., containing false and incorrect information material particular is produced in the transaction of business under the Act.

Clause 28 seeks to amend section 133 of the Customs Act to enhance the maximum punishment of imprisonment from six months to two years in cases of obstruction to the customs officers while performing their duties.

Clause 29 of the Customs Act, 1962 seeks to amend sub-section (1) of section 137 to provide for prior sanction for prosecution of offences under section 135A in relation to preparations.

Clause 30 seeks to insert a new section 154B in the Customs Act, which empowers the Central Government to publish the names and other particular information relating to any proceedings or prosecutions under the Act in respect of any person as the Central Government may think fit. Sub-section (2) provides that no publication shall be made in relation to any penalty imposed under the Act if the time of presenting an appeal before the Commissioner (Appeals) or the Tribunal has expired without an appeal having been presented or has been disposed of. It is also provided to publish the names of directors, managing agents, secretaries, treasurers or managers of the company or the partners of a firm.

Customs Tariff

Clause 31 seeks to amend the first proviso to sub-section (1) of section 8B of the Customs Tariff Act, 1975 to remove the ambiguity concerning exemption from an application of safeguard duty for developing countries with a view to align with corresponding provision under Article 9.1 of WTO Agreement on Safeguard.

Excise

Clause 32 seeks to—

(i) insert sub-section (1A) and provisos to sub-section (2) in section 11A of the Central Excise Act, so as to provide an option for voluntary payment within thirty days of receipt of a notice by a producer, manufacturer or any other person who has been issued with the show cause notice for evasion of duty on account of fraud, suppression of facts and wilful mis-statement or for erroneous refund under the proviso to sub-section (1).

(ii) envisage a reduced amount of penalty at twenty-five per cent. of the duty specified in the notice. To avail the option such person may pay the duty specified in the said notice either in full along with interest and penalty at the rate of twenty-five per cent., of the duty paid or a part thereof along with interest and penalty at twenty five-per cent., of the duty so accepted and paid. The scheme also envisages termination of proceedings against the co-noticee if any, to the proceeding in the event of payment of duty in full along with interest and twenty-five per cent. of duty is paid as penalty within thirty days of receipt of the notice.

Clause 33 seeks to insert a new section 11DDA in the Central Excise Act, 1944 to provide for provisional attachment of property belonging to a person to whom a notice is served under sub-section (1) of 11A or sub-section (2) of 11D to protect revenue in certain cases.

Clause 34 seeks to amend sub-section (2) of section 35E of the Central Excise Act, 1944 to facilitate an officer other than the adjudicating authority to file an appeal before the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

Clause 35 seeks to insert a new section 37E in the Central Excise Act to provide for publication of information relating to any proceedings or prosecutions under the Act in respect of such person as the Central Government may think fit. Sub-section (2) categorically prescribes that no publication shall be made in relation to any penalty imposed under the act until the time of presenting an appeal, before the Commissioner (Appeals) or the Tribunal, has been expired without an appeal having been presented or has been disposed of. It is also provided to publish the names of directors, managing agents, secretaries, treasurers or managers of the company or the partners of a firm.

Clause 36 seeks insert two provisos in sub-rule (3) of rule 16 of the Central Excise Rules, 2002 retrospectively for the period from 29th day of May 2003 and ending with 8th day of July, 2004 to declare independent wire drawing units as “assessee” to resolve multiple proceedings and also to redress the grievances of discrimination against wire drawing units. The process of “wire drawing” from “wire rods” has been held as not amounting to manufacture by the Supreme Court. Therefore, the benefit of credit of duty availed by the manufacturers was withdrawn on 29.5.2003 by a circular issued by the Board. However, certain manufacturers continued to pay duty and to pass on the credit to the ultimate buyer for further manufacture. By an amendment vide section 89 of the Finance (No. 2) Act, 2004, note 10 was inserted in Section XV of the Central Excise Tariff Act, 1985 to declare the said process as ‘manufacture’.

Miscellaneous

Clause 37 seeks to amend section 25 of the Central Sales Tax Act, 1956 to provide for transfer of proceedings relating to inter-State disputes falling under section 6A read with section 9 of the said Act pending before an appellate authority of a State or the Union territory to the Authority notified under section sub-section (1) of section 24 of the said Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to amend section 2 of the Income-tax Act so as to provide that the Tax Recovery Officer may also exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer. The proposed amendment empowers the Central Board of Direct Taxes to prescribe, by rules, such powers and functions to be exercised by the Tax Recovery Officer.

2. Item (ii) of sub-clause (b) of clause 3 of the Bill seeks to insert two new provisos after the eighth proviso in clause (23C) of section 10 of the Income-tax Act relating to incomes not included in the total income. In the tenth proviso as so inserted after the ninth proviso, it is proposed that where the total income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses of clause (23C) of section 10, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or university or other educational institution or hospital or other medical institution shall get its accounts audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the audited accounts and the report of such audit in the prescribed form. This proviso confers power upon the Central Board of Direct Taxes to notify, by rules made by it, the form in which such report of audit is to be furnished along with the return of income and the particulars which such report shall contain.

3. Sub-clause (a) of clause 5 seeks to empower the Central Board of Direct Taxes to prescribe the guidelines, the manner and the conditions subject to which approval is to be granted to an association university, college or other institution under clause (ii) of sub-section (1) of section 35 of the Income-tax Act. Sub-clause (b) of clause 5 seeks to empower the Central Board of Direct Taxes to prescribe the guidelines, the manner and the conditions subject to which approval is to be granted to a university, college or other institution under clause (iii) of sub-section (1) of section 35 of the Income-tax Act.

4. The matters in respect of which rules may be made in accordance with the aforesaid provisions of the Bill are matters of procedure or detail and it is not practical to provide for them in the Bill itself.

5. The delegation of legislative powers is, therefore, of a normal character.

BILL No. 73 OF 2005

A Bill further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
and
commencement. 1. (1) This Act may be called the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005.

(2) It shall be deemed to have come into force on the 1st day of April, 2004.

CHAPTER II

**AMENDMENTS OF THE HIGH COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE)
ACT, 1954.**

28 of 1954.

Amendment
of section 17A.

2. In the High Court Judges (Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as the High Court Judges Act), in section 17A, in sub-section (1),—

(i) after the words “family pension calculated at the rate of fifty per cent of his salary”, the words “plus fifty per cent of his dearness pay” shall be inserted;

(ii) for the words “and thereafter at the rate of thirty per cent of his salary subject to a minimum of twelve hundred and seventy-five rupees per month”, the words “and thereafter at the rate of thirty per cent of his salary plus thirty per cent of his dearness pay subject to a minimum of one thousand nine hundred and thirteen rupees per month” shall be substituted.

3. In section 22A of the High Court Judges Act, in sub-section (2), for the words “of ten thousand rupees”, the words “equivalent to an amount of thirty per cent of the salary plus thirty per cent of the dearness pay” shall be substituted.

Amendment
of section
22A.

4. In section 22C of the High Court Judges Act, for the words “three thousand” and “two thousand”, the words “seven thousand five hundred” and “six thousand” shall respectively be substituted.

Amendment
of section
22C.

5. In the First Schedule to the High Court Judges Act,—

(a) in Part I,—

Amendment
of the First
Schedule.

(i) in paragraph 2,—

(A) in clause (a), for the letters and figures “Rs. 14,630”, the letters and figures “Rs. 21,945” shall be substituted;

(B) in clause (b), for the letters and figures “Rs. 11,150”, the letters and figures “Rs. 16,725” shall be substituted;

(C) in the proviso, for the letters and figures “Rs. 1,80,000” and “Rs. 1,56,000”, the letters and figures “Rs. 2,70,000” and “Rs. 2,34,000” shall respectively be substituted;

(ii) in paragraph 8, for the letters and figures “Rs. 1,80,000”, the letters and figures “Rs. 2,70,000” shall be substituted;

(iii) in paragraph 9, for the letters and figures “Rs. 51,190”, the letters and figures “Rs. 76,785” shall be substituted;

(b) in Part II,—

(i) in the proviso to paragraph 2, for the letters and figures “Rs. 1,80,000” and “Rs. 1,56,000”, the letters and figures “Rs. 2,70,000” and “Rs. 2,34,000” shall respectively be substituted;

(ii) in paragraph 3, for the figures “11,265”, “13,520”, “15,766”, “18,023”, “20,280” and “22,533”, the figures “16,898”, “20,280”, “23,649”, “27,033”, “30,420” and “33,799” shall respectively be substituted;

(c) in Part III,—

(i) in paragraph 2,—

(A) in clause (b), for the letters and figures "Rs. 5,200", the letters and figures "Rs. 7,800" shall be substituted;

(B) in the proviso, for the letters and figures "Rs. 1,80,000" and "Rs. 1,56,000", the letters and figures "Rs. 2,70,000" and "Rs. 2,34,000" shall respectively be substituted.

CHAPTER III

AMENDMENTS OF THE SUPREME COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE) ACT, 1958

Amendment of section 13. 6. In section 13 of the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 (hereinafter referred to as the Supreme Court Judges Act), clause (a) shall be omitted.

41 of 1958.

Insertion of new section 13A. 7. After section 13 of the Supreme Court Judges Act, the following section shall be inserted, namely:—

Benefit of added years of service. "13A. Subject to the provisions of this Act, a period of ten years shall be added to the service of a Judge for the purposes of his pension, who qualified for appointment as such judge under sub-clause (b) of clause (3) of article 124 of the Constitution.".

Amendment of section 16A. 8. In the Supreme Court Judges Act, in section 16A, in sub-section (1),—

(i) in clause (a),—

(A) after the words "family pension calculated at the rate of fifty per cent of his salary", the words "plus fifty per cent of his dearness pay" shall be inserted;

(B) after the words "and thereafter at the rate of thirty per cent of his salary", the words "plus thirty per cent of his dearness pay" shall be inserted;

(ii) in clause (b), after the words "family pension shall be thirty per cent of his salary", the words "plus thirty per cent of his dearness pay" shall be inserted.

Amendment of section 23. 9. In section 23 of the Supreme Court Judges Act, in sub-section (1A), for the words "of ten thousand rupees", the words "equivalent to an amount of thirty per cent. of the salary plus thirty per cent of the dearness pay" shall be substituted.

Amendment of section 23B. 10. In section 23B of the Supreme Court Judges Act, for the words "four thousand" and "three thousand", the words "ten thousand" and "seven thousand five hundred" shall respectively be substituted.

Amendment of the Schedule. 11. In the Schedule to the Supreme Court Judges Act,—

(a) in Part I,—

(i) in paragraph 2,—

(A) the words "and who has completed not less than seven years of service for pension as a Judge in India" shall be omitted;

(B) in clause (b), for the letters and figures "Rs. 4,020", "Rs. 1,21,880" and "Rs. 10,240", the letters and figures "Rs. 6,030", "Rs. 1,82,820" and "Rs. 15,360" shall respectively be substituted;

(C) in the proviso, for the letters and figures "Rs. 1,98,000", the letters and figures "Rs. 2,97,000" shall be substituted;

(ii) in paragraph 3,—

(A) the words “and who has completed not less than seven years of service for pension as a Judge in India” shall be omitted;

(B) in the proviso, for the letters and figures “Rs. 1,80,000”, the letters and figures “Rs. 2,70,000” shall be substituted;

(iii) paragraph 5 shall be omitted;

(b) in Part II,—

(i) in paragraph 2,—

(A) in clause (b), for the letters and figures “Rs. 11,265”, the letters and figures “Rs. 16,898” shall be substituted;

(B) in the proviso, for the letters and figures “Rs. 1,98,000” and “Rs. 1,80,000”, the letters and figures “Rs. 2,97,000” and “Rs. 2,70,000” shall respectively be substituted;

(c) in Part III,—

(i) in paragraph 2,—

(A) in clause (b), for the letters and figures “Rs. 5,200”, the letters and figures “Rs. 7,800” shall be substituted;

(B) in the proviso, for the letters and figures “Rs. 1,98,000” and “Rs. 1,80,000”, the letters and figures “Rs. 2,97,000” and “Rs. 2,70,000” shall respectively be substituted.

STATEMENT OF OBJECTS AND REASONS

In case of all Central Government employees, including members of All-India Services, 50 per cent of the Dearness Allowance (DA) was merged with the basic pay with effect from April 1, 2004. This is now separately shown as Dearness Pay (DP), which is counted for purposes like payment of allowances including House Rent Allowance (HRA), transfer grant, retirement benefits, contribution of GPF and various advances, etc.

Similarly, in case of pensioners, Dearness Relief equal to 50 per cent of the pension has, with effect from 1-4-2004 been merged with pension and shown distinctly as Dearness Pension. This has resulted in the increase in basic pension of the Central Government employees by 1.5 times.

2. In view of the above, a necessity is felt to increase the pension, additional pension and maximum pension of the Judges of the High Courts and Supreme Court by 1.5 times.

The family pension for Judges, with effect from 1-4-2004, is also proposed to be calculated, as in the case of Central Government employees, at the rate of 50 per cent of the salary plus 50 per cent of the Dearness Pay up to the age of sixty-five years or first seven years of death whichever is earlier and thereafter 30 per cent of salary plus 30 per cent of Dearness Pay subject to a minimum of, Rs. 1,913/-.

3. With the merger of 50 per cent of DA with the basic pay, the House Rent Allowance (HRA) admissible to the Central Government employees, including members of All-India Services has been revised to 30 per cent of basic pay plus 30 per cent of Dearness Pay, with effect from April 1, 2004.

On the same analogy, the allowance admissible to the Judges in lieu of Government accommodation, is also required to be revised and fixed at 30 per cent of the salary plus 30 per cent of Dearness Pay with effect from 1-4-2004.

4. Rates of sumptuary allowance admissible to the Judges of High Courts and Supreme Court are also proposed to be revised with effect from April 1, 2004.

5. Under the provisions of article 124(3)(b) of the Constitution, an Advocate having ten years practice can be directly appointed to the Bench of the Supreme Court. Generally, no Advocate below the age of 55 years is considered for appointment. These Judges get pension under Part I of the Schedule to Supreme Court Judges (Salaries and Conditions of Service) Act, 1958. They sometimes cannot even complete seven years of service required for eligibility of pension. As such they are entitled to a fixed amount as pension. For such Judges it is proposed to dispense with the condition of seven years of service and to add a period of ten years to the qualifying period of service for pension.

6. The Bill seeks to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 to achieve the above objects.

NEW DELHI;
The 9th May, 2005.

H.R. BHARDWAJ.

FINANCIAL MEMORANDUM

Clauses 2 and 8 of the Bill seek to amend section 17A(1) of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as the High Court Judges Act) and section 16A(1) of the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 (hereinafter referred to as the Supreme Court Judges Act), so as to revise the rate of Family Pension and fix it at 50 per cent of the salary plus 50 per cent of Dearness Pay up to the age of sixty-five years or first seven years of death whichever is earlier and thereafter 30 per cent of salary plus 30 per cent of Dearness Pay. The proposal does not involve any substantial financial implications as there are only few family pensioners.

2. Clauses 3 and 9 of the Bill seek to amend section 22A(2) of the High Court Judges Act and section 23(1A) of the Supreme Court Judges Act, respectively, to revise the rate of allowance admissible to the judges in lieu of Government accommodation with effect from April 1, 2004. The revised rate of allowance will be 30 per cent of the salary plus 30 per cent of Dearness Pay. The additional expenditure shall be borne mainly by the State Governments. The Central Government will have to meet the additional expenditure in respect of the Judges of Supreme Court, Delhi High Court and about 6 per cent of the expenses in respect of Judges of Punjab and Haryana High Court. At present all the Judges of Supreme Court and Delhi High Court are provided with official residences. Hence, there would be no additional expenditure to be borne by the Central Government.

3. Clauses 4 and 10 of the Bill seek to amend section 22C of the High Court Judges Act, and section 23B of the Supreme Court Judges Act, respectively, to revise the rates of sumptuary allowance admissible to the Judges of High Courts and Supreme Court with effect from 1st day of April, 2004. The additional expenditure in respect of the Judges of Supreme Court, Delhi High Court and about 6 per cent in respect of Judges of Punjab and Haryana High Court will be borne by the Central Government and will be charged on the Consolidated Fund of India. For other High Courts the additional expenditure will be borne by the respective State Governments. The approximate recurring expenditure of the Central Government, on this account, would be Rs. 30.00 lakhs per annum.

4. Clauses 5 and 11 of the Bill seek to amend the First Schedule to the High Court Judges Act, and the Schedule to the Supreme Court Judges Act, respectively, to revise the rates of pension, additional pension and total pension of the Judges with effect from 1st day of April, 2004. The additional expenditure in respect of the Judges of Supreme Court, Delhi High Court and about 6 per cent in respect of Judges of Punjab and Haryana High Court will be borne by the Central Government and will be charged on the Consolidated Fund of India. For other High Courts the additional expenditure will be borne by the respective State Governments. The approximate recurring expenditure of the Central Government would be Rs. 30.00 lakhs per annum.

5. Clauses 6 and 7 of the Bill seek to amend the provision to dispense with the condition of seven years of service and to add a period of ten years to the qualifying period of service for pension in case of Part I Judges of Supreme Court. The proposal does not involve any substantial financial implications as at present there is only one judge under this category. The approximate recurring expenditure of the Central Government, on this account, would be about Rs. 2.00 lakhs per annum. This will be charged on the Consolidated Fund of India.

6. The Bill does not involve any other expenditure of either recurring or non-recurring nature.

G. C. MALHOTRA,
Secretary-General.